

RESPONSE UNDER 37 C.F.R. §1.105

The undersigned has been advised that there was no advertising or offers for sale of 'Penlava' to the general public more than one year before the December 8, 2000 filing date of the present application. Further, the undersigned has now been advised that plant material was provided to a licensed propagator at the end of 1999 for the sole purpose of establishing mother plants from which commercial 'Penlava' plants were to be generated in 2000. Commercial sales of 'Penlava' are believed to have occurred in 2000, less than one year before the filing date of the present application. Further, commercial sales of 'Penlava' did not occur in the United States until the second quarter of 2001.

Pursuant to the Examiner's request, please find enclosed a copy of the publication of 'Penlava' in the Official Gazette of the Community Plant Variety Office No. 4/1999, dated August 16, 1999. No other CPVO documents are available at this time that were published more than one year before the filing date of the present application.

In view of the above, the scant information available in the publication of 'Penlava' would not have enabled one of ordinary skill in the art to reproduce the claimed plant. Thus, the rejection under 35 §102(b) is wholly inappropriate in this instance.

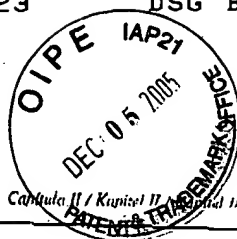
CONCLUSION

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

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annex 1

4/99/30

Capitula II / Kipitel II / Kapitel II / Kεφάλαιο II / Chapter II / Chapitre II / Capitolo II / Hoofdstuk II / Capitulu II / Luku II / Kapitál II

16. 8. 99

1	2	3	1	2	3
a: 99/0702	a: 02103 b: 02598 c: 00753	a: NEVSON b: pb 135	a: 99/0800	a: 02245 b: 02245 c:	a: TEMPO b: tempo
a: 99/0704	a: 02600 b: 02600/02602 c: 02601	a: ARIWA b: arlwa	a: 99/0801	a: 02245 b: 02245 c:	a: ESMERALDA b: esmeralda
a: 99/0731	a: 00010 b: 00010 c: 00011	a: MERIDIAN b: a 931/15	a: 99/0802	a: 02245 b: 02245 c:	a: ASTORIA b: astoria
a: 99/0745	a: 00689 b: 00689 c: 00827	a: INITIAL b: initial	a: 99/0803	a: 02245 b: 02245 c:	a: PRESTO b: presto
a: 99/0804	a: 00700 b: 00700 c: 02624	a: SVATAVA b: ueb 2059/7	Petunia Juss. a: 95/2958	a: 00164 b: 00505 c: 00423	a: CASCHAMP b: caschamp
a: 99/0867	a: 02639 b: 01759 c:	a: BRINA b: brina	a: 98/1751	a: 01101 b: 02470 c:	a: LAZZPERSA b: lazzpersaan
Nemesis Vent. a: 97/0443	a: 01612 b: 01360 c: 00376	a: WHITE WINGS b: vikroc	a: 99/0708	a: 00351 b: 00351 c:	a: KLEPTURP b: klepurp
Pelargonium L'Hérit. ex Ait. a: 97/0595	a: 00351 b: 00351 c:	a: KLEORED b: z 96 003	Phascolus vulgaris L. a: 97/1173	a: 00938 b: 01892 c: 02329	a: CLIMBO b: xp 4406
a: 97/0752	a: 00401 b: 00823 c: 00065	a: AMRI BRIGHT RED b: amri bright red	a: 98/0111	a: 00053 b: 00053 c:	a: CARANA b: nun 6248
a: 97/0753	a: 00401 b: 00823 c: 00065	a: FREE DARK RED b: free dark red	a: 98/0955	a: 00088 b: 00088 c:	a: FLORINE b: 16-44 r
a: 98/1664	a: 00089 b: 00089 c: 00441	a: PACMEL b: p-5139	a: 98/1089	a: 00938 b: 00938 c: 02329	a: JAMAICA b: 95rs1254
a: 98/1665	a: 00089 b: 00089 c: 00441	a: PENLAVA b: p-885	a: 99/0043	a: 00938 b: 01891 c: 02329	a: ERRO b: ex 388
a: 99/0795	a: 02245 b: 02245 c:	a: MAESTRO b: maestro	a: 99/0046	a: 00938 b: 00938 c: 02329	a: ALBERTA b: rs 1386
a: 99/0796	a: 02245 b: 02245 c:	a: AMANDINE b: amandine	a: 99/0047	a: 00938 b: 00938 c: 02329	a: ALICANTE b: rs 1510
a: 99/0797	a: 02245 b: 02245 c:	a: ADAGIO b: adagio	a: 99/0167	a: 00938 b: 02515 c: 02329	a: VALERIA b: bs 4310197
a: 99/0798	a: 02245 b: 02245 c:	a: FLEURINE b: fleurine	a: 99/0162	a: 00076 b: 00076 c:	a: JASMIN b: r 1825
a: 99/0799	a: 02245 b: 02245 c:	a: LIBERTINE b: libertine	a: 99/0163	a: 00076 b: 00076 c:	a: CARSON b: r 8637
			a: 99/0164	a: 00076 b: 00076 c:	a: PALATI b: sb 4095